

January 11, 2007



Hanson North America
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& General Counsel

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Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Motions of Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc. in
STB Finance Docket Numbers 34890, 3802, 34899 and 34922

Petition of Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc. for
Interim Alternative Rail Service under 49 CFR Part 1146 over tracks and
facilities of South Plains Switching Ltd. *F034985*

EXPEDITED RELIEF FOR SERVICE REQUESTED

Dear Mr. Secretary:

On behalf of Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc.,
enclosed please find an original and ten copies of certain motions in STB Finance
Docket Numbers 34890, 3802, 34899 and 34922 and a petition for expedited relief
for service inadequacies pursuant to 49 CFR part 1146.

I also enclose a check in the amount of the \$200.00 filing fee.

Thank you for your assistance in this matter and please contact me with any
questions in this regard.

Yours truly,

A handwritten signature in black ink, appearing to read 'Michael H. Hyer'.

Michael H. Hyer
Counsel for Hanson Aggregates, Inc. and
Hanson Aggregates WRP, Inc.

Enclosures

cc: South Plains Switching, Ltd
Thomas McFarland, Esq.
John Heffner, Esq.
Charles H. Montange, Esq.
William A. Mullins, Esq.
Adrian L. Steel, Jr.
Federal Railroad Administration

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Office of Proceedings

JAN 12 2007

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



Hanson Aggregates, Inc.)
Hanson Aggregates WRP, Inc.)
Alternative Rail Service)
South Plains Switching)

F.D. 34985
218 436

PYCO Industries Inc.)
Feeder Line Application)
South Plains Switching)

F.D. 34890 - 218 432

PYCO Industries Inc.)
Alternative Rail Service)
South Plains Switching)

F.D. 34802 218 433

PYCO Industries Inc.)
Temporary Relief)
South Plains Switching)

F.D. 34899 218 434

Keokuk Junction Railway Co.)
Feeder Line Application)
South Plains Switching)

F.D. 34922 218 435

Petitioners

Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc.

Motion to Void Purported Transfer of Property Interests

Motion to Stay Attempted Cancellation of Track Lease

Petition for Alternative Rail Service under 49 CFR Part 1146

EXPEDITED TREATMENT REQUESTED

FILED
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ST. LOUIS
TRANSPORTATION BOARD

Hanson Aggregates, Inc., a Texas corporation, and Hanson Aggregates WRP, Inc. a Delaware corporation¹, move for an order by this Board (i) voiding any transfer under the unrecorded quitclaim deed, dated April 28, 2006, by South Plains Switching Ltd. Co., (“SAW”) to Choo Choo Properties, Inc., (“Choo Choo”) , (ii) staying any cancellation by SAW or Choo Choo of the Lease of Land and Trackage (Short Term) – Contract No. 183228,” dated as of March 5, 1991 (the “Hanson Track Lease”), and (iii) petition this Board for interim alternative rail service under 49 U.S.C. 1123 and 49 C.F.R.1146. This requested relief is in addition and supplemental to the relief requested by Hanson Aggregates in its filing with the Board dated December 21, 2008. This motion and petition is made as a result of new claims and information, not previously known to Hanson, set out in SAW’s reply in F.D. 34890, dated December 27, 2006 (“SAW’s December Reply”). A declaration by Jason B. Milacek in support of this motion is attached hereto as Exhibit A (the “Milacek Declaration”).

I. BACKGROUND

A. Petitioners and Properties. Hanson Aggregates WRP, Inc. is the successor by assignment to the rights and interests of Western Rock Products, Inc., as lessee, under the “Lease of Land and Trackage (Short Term) – Contract No. 183228,” dated as of March 5, 1991, with The Atchison, Topeka and Santa Fe Railway Company (“Santa Fe”), as the lessor (the “Hanson Track Lease”). SAW is the successor by

¹ In prior filings, Hanson is referred to generically as “Hanson” or “Hanson Aggregates.” However, like most large corporate organizations, Hanson conducts its business through various subsidiary corporations. This filing is made by the specific corporations involved, although Hanson does not believe its more informal usage in prior filings has caused any confusion or prejudice. Also, Hanson’s initial filings were made by Hanson Building Materials America, Inc., which is the U.S. corporate parent for Hanson’s operations in the United States, on behalf of these operating subsidiaries. However, Hanson recently adopted a new naming convention and Hanson now refers to the business group consisting of its businesses in United States (which would include these petitioners) as “Hanson North America,” which appears on the letterhead of Hanson’s December Filing.

assignment to the rights and interests of Santa Fe in the Hanson Track Lease. Hanson Aggregates, Inc. is a producer and seller of construction aggregates. Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc. are affiliated companies, sharing a common parent company. Hanson Aggregates commonly sells aggregates using facilities owned or controlled by Hanson Aggregates WRP, Inc. (Milacek Declaration) Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc. are collectively referred to herein as "Hanson."

Hanson also leases from a private landowner property (the "Hanson Yard") immediately adjoining the Hanson Track Lease, which Hanson uses for transloading, stockpiling, and distributing aggregates delivered by rail to that site through the Hanson Track Lease. The Hanson Track Lease provides the only rail access to the Hanson Yard. (Milacek Declaration)

B. Hanson Statements. Hanson appeared in this proceeding in support of a feeder line application of PYCO. On June 12, 2006, Hanson authorized PYCO's counsel to state to the Board that Hanson believed SAW's service to be inadequate.² Hanson also submitted to the Board a verified statement, dated August 1, 2006 ("Hanson's August Filing"), stating that Hanson is a shipper of aggregates and customer of SAW and that Hanson believed SAW's service to be inadequate. Hanson further stated that because of its concerns about SAW's service and business practices and its fear of retaliation by SAW, Hanson was reluctant to enter into commitments for aggregates sales in the Lubbock area. For the Board's convenience, a copy of Hanson's August Filing is attached as Exhibit B.

² A copy of that email message, dated June 12, 2006, is included in Exhibit E to SAW's December Reply.

C. **Duininck Bid and Related Events.** As explained in the Milacek Declaration, Duininck Bros., a highway construction contractor (“Duininck”), was preparing to bid on a highway construction project for the Texas Department of Transportation and solicited a bid from Hanson to supply aggregates for use in that project. That bid would require delivery by rail using the Hanson Track Lease to the Hanson Yard. Hanson decided to submit a bid based on the protections Hanson believed to have been afforded it under this Board’s decision, dated August 2, 2006, in F.D. 34890 and related proceedings (the “August Decision”). (Milacek Declaration) A copy of that bid is attached as Exhibit A to Hanson’s December Filing (the “Duininck Bid”).

On December 5, 2006, Duininck was publicly identified as the winning bidder on the highway construction project and that same day Duininck confirmed to Hanson that it intended to procure its aggregate supply for that project from Hanson. (Milacek Declaration) Not by mere coincidence, by a letter dated that same day, December 5, 2006, SAW notified Hanson of SAW’s cancellation of the Hanson Track Lease (the “SAW Cancellation Notice”). (Exhibit B to Hanson’s December Filing)

The following day, December 6, 2006, Hanson (which at that time had not yet received the SAW Cancellation Notice) contacted Mr. Larry Wisener at SAW³ by telephone to advise SAW that the aggregates shipments for the project were expected to commence in mid-January 2007. (Milacek Declaration) In the call, Mr. Wisener indicated that SAW would not provide such service as SAW had sent Hanson the day before a notice canceling the Hanson Track Lease. (Milacek Declaration) Mr. Wisener also indicated that the property subject to the Hanson Track Lease had been transferred to

³ As explained in the Milacek Declaration, Mr. Wisener has been Hanson’s contact at SAW and no one had ever directed Hanson to contact any other person at SAW or informed Hanson that Mr. Wisener did not speak for SAW.

another company, but did not disclose the identity of the transferee or the date of the transfer. (Milacek Declaration)

D. Hanson's December Filing. By letter, dated December 21, 2006 (Hanson's December Filing), Hanson advised the Board of these facts and asked the Board to declare SAW's attempts to cancel the Hanson Track Lease and transfer the property subject to that lease as null and void and in violation of the August Decision.

E. SAW's December Reply. On December 27, 2006, SAW replied ("SAW's December Reply") to Hanson's December Filing. That reply raised several additional issues.

1. SAW Transfer to Choo Choo. In SAW's December Reply, SAW revealed for the first time to Hanson and, Hanson believes, to this Board that SAW, by means of an unrecorded quitclaim deed, dated April 28, 2006 (the "Quitclaim Deed"), had attempted to transfer the Hanson Track Lease and ownership of the land subject to the Hanson Track Lease to Choo Choo Properties, Inc. ("Choo Choo"). A copy of the Quitclaim Deed is attached as Exhibit A to SAW's December Reply. Prior to the receipt of SAW's December Reply, neither Hanson, nor to Hanson's knowledge anyone else other than SAW and Choo Choo, were aware of that Quitclaim Deed or, prior to the conversation with Mr. Wisener on December 6, 2006, were aware of any intention by SAW to transfer that track to another entity or to cancel the Hanson Track Lease. (Milacek Declaration)

2. Choo Choo Cancellation Notice. Notwithstanding this Board's prior conclusion that SAW and Choo Choo were not separate and independent entities (August Decision, page 6), and although the SAW Cancellation Notice was in the words

of SAW's counsel "on SAW letterhead and . . . signed by the owner of SAW," SAW nevertheless persisted with the pretense of separateness by explaining that the SAW Cancellation Notice was really sent by SAW "on behalf of Choo Choo" (SAW December Reply, page 2)⁴. SAW's counsel, but now acting as counsel for Choo Choo, then issued another notice of cancellation to Hanson on behalf of Choo Choo, which is attached to SAW's December Reply as Exhibit D (the "Choo Choo Cancellation Notice").

3. **Track 9200 Request.** SAW's December Reply also revealed for the first time to Hanson that SAW had requested a return of "track 9200 to SAW" in order to handle Hanson's shipments (Exhibit E to SAW's December Reply). Hanson is concerned by that request as SAW had never contacted Hanson about the use of that track. Rather, what Hanson really needs is rail service to its existing yard under its existing track lease.

⁴ In arguing that this SAW notice was really made on behalf of Choo Choo, SAW claims that it is "just as the [Hanson December Filing which] was sent by Hanson North American (sic) in behalf of Hanson Aggregates." It is not. First, the Hanson entities referred to are all commonly controlled affiliates and no Hanson entity is purporting to act in this matter on behalf of any unaffiliated company. Rather, the notice by SAW and its explanation further reveals the real inseparable connection between them. Second and more importantly, Hanson is not using its separate entities as a device to avoid the jurisdiction of this Board or its legal obligations. The only purpose for the existence of both SAW and Choo Choo and for the property transfers between them is to evade that jurisdiction and legal obligations. See August Decision, page 6.

II. ARGUMENT

A. THE SAW AND CHOO CHOO CANCELLATION NOTICES OF THE HANSON TRACK LEASE ARE VIOLATIONS OF THE BOARD'S AUGUST DECISION AND SHOULD BE DECLARED VOID AND STAYED.

In paragraph 4 of the Order in the August Decision, this Board ordered that "SAW may not transfer any property interests in, or rescind any leases of agreements concerning PYCO or any shipper that supports a feeder line application to purchase all or any part of SAW's rail lines [until completion of the feeder line application proceedings]." (August Decision, page 9, paragraph 4. *emphasis added*). Hanson is within the class of shippers the Board intended to protect in that order and Hanson relied upon such protection in bidding aggregates sales in Lubbock, notwithstanding its concerns about retaliation by SAW for its support of PYCO's feeder line application. (Milacek Declaration) The SAW Notice of Cancellation and the Choo Choo Notice of Cancellation are both naked violations of that order, and the Board should rule those cancellations void and stay all efforts by SAW or Choo Choo to cancel the Hanson Track Lease pending completion of these feeder line sale proceedings as contemplated by the Board's Decision.

B. THE QUITCLAIM DEED TRANSFERRING RAILROAD PROPERTY BY SAW TO CHOO CHOO IS VOID AND SAW SHOULD BE DECLARED TO BE THE OWNER OF THAT PROPERTY SUBJECT TO THE BOARD'S JURISDICTION IN THESE PROCEEDINGS.

Among the issues addressed in the August Decision was PYCO's claim that certain transfers by SAW to Choo Choo would prevent PYCO from shipping by rail and were made to evade the Board's jurisdiction over such property. In that case, the Board held that the "facts lead us to conclude that SAW sold real estate, track, and related leases and agreements on portions of its lines to prevent that property from being acquired in a feeder line sale – in other words, to evade the Board's authority over the sale of that property." (August Decision, page 6). The facts of SAW's transfer of the Hanson Track Lease and the underlying real estate to Choo Choo by the Quitclaim Deed lead to the same conclusion. There simply is no other explanation for that deed than as a device to evade the Board's jurisdiction and authority to include that property in a feeder sale. For the same reasons, the Board should void that transfer and rule that SAW remains the owner of that property and holds it subject to the jurisdiction of this Board and to these proceedings.

PYCO filed a verified motion on October 13, 2006 in F.D. 34890, 34889, and 34802 to void certain additional transfer by SAW to Choo Choo that predated the May 5, 2006 date referred to in the Board's August Decision. That motion raises issues similar to those raised by Petitioners here, and Petitioners incorporate herein the arguments, points, and authorities set out in that motion by PYCO.

C. THE HANSON TRACK LEASE AND UNDERLYING REAL PROPERTY IS RAILROAD PROPERTY SUBJECT TO THIS BOARD'S JURISDICTION.

In prior proceedings, SAW has defended the transfers to Choo Choo on, among other grounds, claims that the disputed property was not used for railroad purposes. That is not an issue here. There is no question that the property transferred by the Quitclaim Deed was used for railroad purposes, that Hanson intended to continue to use it for those purposes and that Hanson's only hesitation in using that track arose from concerns about SAW and its service. (Milacek Declaration, Hanson's August Filing). Mr. Wisener (and therefore, SAW and Choo Choo) also understood the past and current railroad uses of that property. In a federal court proceeding on July 3, 2006 (some months after the date of the Quitclaim Deed), Mr. Wisener in connection with an explanation of the effect of some car storage practices testified that:

The other cars that were on the west leg of the wye, we moved out, and I have them on the end of another customer's track, Hanson Aggregates, and they're stored right there for now. And when Hanson gets a train in to unload, we have to move those cars, put them on another track, and then move them back so as to not block other customers.⁵

D. THE ACTIONS OF SAW AND CHOO CHOO UNLAWFULLY DEPRIVE HANSON OF ESSENTIAL RAIL SERVICE TO ITS LUBBOCK YARD.

The only means of rail deliveries to the Hanson Yard is by means of the Hanson Track Lease and as it is not practical or economically feasible for Hanson to deliver

⁵ This testimony is found at page 55, line 25 and page 56, lines 1-5 of the transcript attached as Exhibit C to PYCO's Motion to Enforce Protocol, to Void a Sale, to Halt Retaliatory Actions and to Preserve Status Quo, dated July 14, 2006 filed in these related cases. At the time of that testimony, July 2006, it is also apparent that Mr. Wisener, in referring to Hanson as a customer and the movement of cars on its track, was speaking for SAW.

aggregates to the Hanson Yard by means other than by rail. Cancellation of the Hanson Track Lease will deprive Hanson of the ability to deliver aggregates to its yard in Lubbock. (Milacek Declaration) Unlike some other transloading sites in the Lubbock area, the facility on the Hanson Track Lease is able to unload bottom dump rail cars. This is important and particularly beneficial to Hanson, as this is the type of cars Hanson typically uses in shipments to Lubbock. This facility, therefore, allows for more efficient and less costly unloading and handling of the aggregates. Accordingly, while there are other potential locations in the Lubbock area that Hanson may be able to use to deliver aggregates by rail for the Duininck Bid and potential future bids, shipments delivered to Hanson's Yard through the Hanson Track Lease are the most economical and efficient. In other words, the actions of SAW and Choo Choo have deprived Hanson of the ability to ship to its yard in Lubbock, which is its most efficient and cost effective means for Hanson to distribute aggregates into this market.

E. THE ACTS OF SAW AND CHOO CHOO UNDERMINE THE PUBLIC INTEREST IN ASSURING COMPETITIVE SOURCES OF MATERIALS FOR PUBLIC HIGHWAY CONSTRUCTION PROJECTS AND THEREFORE ARE CONTRARY TO PUBLIC TRANSPORTATION POLICY.

In Lubbock, there are few local sources of aggregates meeting highway specifications and such aggregates must be imported, generally by rail. (Milacek Declaration) Hanson has at significant expense continued to maintain the Hanson Yard in Lubbock in order to participate as an aggregates supplier to the Lubbock area, and as stated above, Hanson believes deliveries to the Hanson Yard by means of the Hanson

Track Lease is the most effective means for Hanson to sell aggregates into the Lubbock market. Loss of the Hanson Track Lease will not only deprive Hanson of rail service to its yard in Lubbock, it will harm the public by reducing the aggregates sources available to customer and contractors in Lubbock, including important public projects such as Duinick's highway project. (Milacek Declaration)

F. THERE WAS NO RAILROAD PURPOSE FOR THE TRANSFER AND CANCELLATION OF THE HANSON TRACK LEASE.

There was no railroad purpose for the Quitclaim Deed or the efforts by SAW and Choo Choo to cancel the Hanson Track Lease. Indeed, that action is astonishing in that it would deprive SAW of the ability to earn revenue on the Hanson shipments. It serves no purpose other than that identified in the Board's August Decision, i.e., "to evade the Board's authority over the sale of that property." (August Decision, page 6).

G. THE ACTIONS OF SAW AND CHOO CHOO WERE UNLAWFUL RETALIATORY ACTIONS AGAINST HANSON FOR EXERCISING ITS RIGHT TO COMMENT TO THIS BOARD.

From the very beginning, Hanson has been concerned about SAW's business practices and the risk of retaliation for expressing its view to this Board. (Hanson August Filing and Milacek Declaration). No one can seriously believe that it is a mere coincidence that, after having transferred the track to Choo Choo in April 2006 and after having said nothing to Hanson about that transfer or any intention to terminate the Hanson Track Lease, SAW suddenly decides to cancel that lease on the same day that Hanson's aggregates customer, Duinick, wins a bid for a highway project requiring rail delivery of substantial quantities of aggregates. This is naked retaliation against Hanson

by SAW for Hanson having had the temerity to state to this Board that it believed SAW's service to be inadequate. This is precisely the type of conduct that this Board intended to prevent in its August Decision. Surely, in order to maintain the integrity of these proceedings, SAW must not be allowed to retaliate against a shipper.

H. THE PROPERTY TRANSFER WAS IN BREACH OF THE BNSF AGREEMENT BY WHICH SAW ACQUIRED THE PROPERTY.

Section 7(b) of the Asset Purchase Agreement⁶ by which SAW acquired these assets provides in pertinent part:

Any subsequent agreement by [SAW] to sell all of any portion of the Rail Line (except to an affiliate of [SAW]) must contain the effective right for Seller to purchase the Rail Line or portion thereof, from [SAW], on the same, or substantially similar, basis as set forth in the subsequent sale agreement. . . . The foregoing shall not apply where [SAW] wishes to sell small segments of track or property comprising the Rail Line where such sale would not hinder the overall operations of [SAW] on the Rail Line.

SAW has taken the position that Choo Choo is not an affiliate of SAW⁷ and, therefore, unless the exception provided in the last sentence applies, SAW would breach that agreement by transferring the Hanson Track Lease and underlying real property to Choo Choo without first offering that property to BNSF. There is no evidence that SAW first offered that property to BNSF or that BNSF otherwise consented to that transfer. With reference to certain other property transfers, SAW has testified in these proceedings that:

⁶ This Asset Purchase Agreement has been referred to in various filings. A copy of the relevant sections (including Section 7(b)), is included as Exhibit E to the Declaration of James L. Gorsuch, dated July 28, 2006, accompanying SAW's reply dated July 7, 2006.

⁷ See testimony of Delilah Wisener at page 71, lines 19-20 of the transcript attached as Exhibit C to PYCO's Motion to Enforce Protocol, to Void a Sale, to Halt Retaliatory Actions and to Preserve Status Quo, dated July 14, 2006 filed in these related cases.

Permission was not obtained from the BURLINGTON NORTHERN & SANTA FE RAILWAY COMPANY ("BNSF") pursuant to an Asset Purchase Agreement signed between SAW and BNSF for the reason that the property was not used in the operations of SAW and did not serve any customers."⁸

Obviously, the Hanson Track Lease and underlying real property is used in SAW's operations⁹ and serves a customer – Hanson. The effect of SAW's transfer of that property to Choo Choo and the efforts by SAW and Choo Choo to then cancel that lease is to deprive Hanson of its ability to deliver aggregates from its quarries on the BNSF to its yard in Lubbock. This is precisely the type of transfer intended to be subject to the requirements of Section 7(b) of that Asset Purchase Agreement. The Quitclaim Deed constitutes a breach of SAW's obligations under that agreement and should be declared null and void for that reason.

I. SAW'S REQUEST FOR A RETURN OF TRACK 9200 IS NOT THE PROPER REMEDY FOR HANSON'S SERVICE NEEDS AND THE BOARD SHOULD NOT GRANT THAT REQUEST WITHOUT A FURTHER INVESTIGATION OF THE PURPOSE AND INTENT OF THAT REQUEST.

SAW's December Reply also included a request by SAW for a return of "track 9200 to SAW," purportedly in order to handle Hanson's shipments. (Exhibit E to SAW's December Reply). However, Hanson has never used track 9200 for aggregates transloading or any other purpose, and no one at SAW (including Delilah Wisener and

⁸ Declaration of Delilah Wisener, dated July 26, 2006, accompanying SAW's Response, dated July 28, 2006, filed in these related proceedings) (emphasis added)

⁹ See, for example, the testimony of Larry Wisener in the federal court hearing quoted above.

Larry Wisener) or any other person has ever contacted Hanson about using such track or inquired of Hanson whether such track would be suitable for the deliveries contemplated by Hanson. (Milacek Declaration) However, that track has been used in the past by competitors of Hanson for transloading aggregates. (Milacek Declaration) Indeed, Mr. Wisener has testified in these proceedings that track 9200 "was used primarily for storage and loading and unloading of Vulcan Materials' railcars."¹⁰ Vulcan Materials is a construction aggregates producer and competitor of Hanson.

There is no need for this request. The solution to handling Hanson's shipments is simply to provide service to the Hanson Yard by means of the Hanson Track Lease. Hanson does not need the use of track 9200; rather it simply needs rail service to its existing track lease and yard.

Given that SAW has never approached Hanson about using track 9200, Hanson is concerned that this request may not have been made in good faith by SAW to the Board in order to assist Hanson, but as a ruse to obtain the use of that track for the benefit of a competitor of Hanson, while effectively depriving Hanson of the ability to receive service at its yard.

II. PETITION FOR ALTERNATIVE RAIL SERVICE UNDER 49 U.S.C. 1123 AND 49 C.F.R.1146 AND REQUEST FOR EXPEDITIOUS TREATMENT.

The Board in a series of decisions in F. D. 34802 authorized the provision of alternative rail service to PYCO by West Texas & Lubbock Railway Company, Inc. ("WTL") over the lines of SAW in Lubbock, Texas. PYCO requested authorization for

¹⁰ Declaration of Larry Wisener, dated July 26, 2006, accompanying SAW's Response, dated July 26, 2006, filed in these related proceedings.

WTL to serve other customers of SAW in addition to PYCO, and WTL was prepared to provide service to such other SAW customers. However, the Board limited the authorization to service to PYCO, concluding that there had not been an adequate showing of a substantial deterioration of service to such other customers. (Decision served January 26, 2006, F. D. 34802, page 4)

There is now, however, a clear demonstration of “substantial, measurable deterioration or other demonstrated inadequacy in rail service” provided by SAW, the incumbent carrier, to Hanson. SAW has purported to transfer the Hanson Track Lease to Choo Choo (which is a real estate investment company, not a railroad), and both SAW and Choo Choo have sought to cancel the Hanson Track Lease, depriving Hanson of rail service to its Lubbock yard. This isn’t so much a case of a deterioration of service, but a refusal by SAW to provide such service and purposefully disabling itself from being able to provide such service.

As explained by Mr. Milacek in his supporting declaration, Hanson contacted SAW on December 6, 2006 to request rail service for its aggregates shipments and was informed that such service would not be provided, as SAW was canceling the Hanson Track Lease. Based on that conversation and SAW’s December Response, there is no basis to believe SAW has any intention of providing service to the Hanson Yard.

In support of this petition by Hanson, attached as Exhibit C is letter from WTL confirming that it will provide alternative service to Hanson, in addition to PYCO, safely without degrading service to its existing customers. For the foregoing reasons, Hanson is entitled to alternative service by WTL under the threefold standard set out in 49 CFR Part 1146.

Since WTL is now providing alternative service in the Lubbock area to PYCO under an existing order from this Board and pursuant to already established protocols and procedures, Hanson believes the most efficient and effective means to provide the alternative service needed for Hanson is for this Board to simply modify and enlarge the existing alternative service authorization to include service to Hanson in addition to PYCO.

There is an immediate need for such service in order to deliver aggregates to Duinick pursuant to the Duinick Bid. Since delays in such deliveries will delay Duinick's ability to timely complete its highway construction project, Hanson respectfully requests that this motion be considered on an expedited basis.

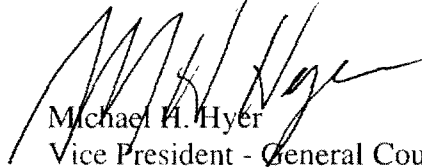
III. CONCLUSION

For the foregoing reasons, Hanson moves and petitions this Board to:

- a. Declare the attempts by SAW and Choo Choo to cancel the Hanson Track Lease as a violation of this Board Decision released August 3, 2006, and therefore null and void and stay any cancellation of the Hanson Track Lease pending the conclusion of the feeder line application proceedings.
- b. Declare null and void the Quitclaim Deed by SAW to Choo Choo and declare SAW to be the continuing owner of the properties and to hold them subject to the jurisdiction of this Board in these proceedings.
- c. Deny SAW's request for return of track 9200 until SAW provides a more complete demonstration of the intent and purpose of that request.

d. Authorize alternative service to Hanson by WTL under 49 CFR Part 1146
over the tracks and facilities of SAW.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael H. Hyer", is written over the typed name and title.

Michael H. Hyer
Vice President - General Counsel
Hanson North America
300 E. John Carpenter Freeway
Irving, Texas 75062
Telephone: 972 653-6141
Facsimile: 972 653-6213

Attorney for Petitioners Hanson Aggregates,
Inc. and Hanson Aggregates WRP, Inc.

Exhibit A: Milacek Declaration
Exhibit B: Hanson August 1, 2006, letter
Exhibit C: WTL Letter

CERTIFICATE OF SERVICE

I certify service on January ¹¹/₁₁, 2007 by deposit of copies of the foregoing with Federal Express, next business day delivery, upon the following:

South Plains Switching, Ltd, (incumbent carrier)
10917 --- E. FM 250 & E Co. Road 78
Slaton, TX 79364

Thomas McFarland, PC
208 South LaSalle, St., Suite 1890
Chicago, IL 60604-1112
(counsel for South Plains Switching, Ltd)

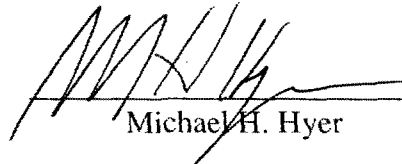
John Heffner, Esq.
1920 N Street, N.W., Suite 800
Washington, D. C. 20036
(counsel for West Texas & Lubbock Railway Company Inc., proposed alternative carrier)

Charles H. Montange
246 NW 162nd Street
Seattle, Washington 98179
(counsel for PYC) Industries, Inc.)

William A Mullins
Baker & Miller PLLC
2401 Pennsylvania Ave, Nw-Suite 300
Washington, DC 20037
(counsel for Keokuk Junction Railway Company)

Adrian L. Steel Jr.
Mayer, Brown, Rowe & Maw, LLP
1909 K Street, N.W.
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(counsel for BNSF Railway Company)

Federal Railroad Administration
1120 Vermont Avenue, NW
Washington, DC 20590


Michael H. Hyer

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO Industries Inc,
Alternative Rail Service
South Plains Switching

) F.D. 34802, 34899, 34890 and 34922
)
) DECLARATION OF JASON B. MILACEK
)

I, Jason B. Milacek, make the following declaration in support of the motions and petitions by Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc. in the above-referenced proceedings.

1. I am the Sales Representative for the Southwest Region, North Zone, of Hanson Aggregates, Inc.

2. Based on information and belief and my understanding of the records Hanson Aggregates Inc. and it affiliates maintained in the ordinary course of business:

(a) Hanson Aggregates WRP, Inc. ("Hanson WRP") is the successor by assignment to the rights and interests of Western Rock Products, Inc, as the lessee, under the "Lease of Land and Trackage (Short Term) – Contract No. 193228," dated as of March 5, 1991, with The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), as the lessor (the "Hanson Lease"). South Plains Switching Ltd. Co., ("SAW") is the successor by assignment to the rights and interests of Santa Fe in the Hanson Lease. Hanson WRP also leases from a private landowner property (the "Hanson Yard") immediately adjoining the Hanson Lease, which is uses for the stockpiling and distribution of constructions aggregates.

(b) Hanson Aggregates, Inc., a Texas corporation ("Hanson"), is a producer and seller of construction aggregates. Hanson and Hanson WRP are affiliated

companies, and Hanson Aggregates commonly sells aggregates produced by Hanson WRP or using facilities owned or controlled by Hanson WRP.

3. I am responsible for aggregates sales, whether by Hanson WRP or Hanson, to customers in the Lubbock, Texas area. In 2006, Duininck Bros., a highway construction contractor ("Duininck"), solicited a bid from Hanson to supply aggregates for use in a highway construction project for the Texas Department of Transportation in the Lubbock, Texas area. On behalf of Hanson, I submitted to Duininck a bid to supply the aggregates. A copy of that bid is attached as Exhibit A to Hanson's filing with this Board, dated December 21, 2006, in case F.D. 34802 (the "Bid"). The Bid contemplates delivery of the aggregates by rail transportation by the Burlington Northern Santa Fe Railroad and SAW by means of the Hanson Lease to the Hanson Yard for transloading to trucks and delivery to the construction site.

4. Because of past experiences with SAW, Hanson was reluctant to do business with SAW and therefore was reluctant to bid projects in the Lubbock area. Moreover, at the time Duininck requested a bid from Hanson, I and others within Hanson were concerned that SAW may seek to retaliate against Hanson because Hanson had expressed its support for a petition filed by PYCO with this Board. Nevertheless, I was aware that this Board had entered a decision, released August 3, 2006 (the "Order") and I understood that, among other matters, the Order was intended to protect PYCO and shippers, such as Hanson who had supported PYCO's petition, by preserving the status quo pending resolution of the matters raised that proceeding. I also believed that the land subject to the Hanson Lease continued to be owned by SAW and that the Hanson Lease remained in full force and effect. At that time I was not aware of any facts suggesting that this property had been transferred by SAW to any other person or that SAW or any other person had any intention or plans to terminate the Hanson Lease. While I was not

familiar with all the details of the Order, I believed when Hanson submitted the Bid that Hanson and the Hanson Lease was subject to the protection afforded in the Order and that the Order would protect Hanson from SAW terminating the Hanson Lease or otherwise refusing to provide the rail service to the Hanson Lease.

5. On December 5, 2006, in a bid letting by the Texas Department of Transportation, Duinick was publicly identified as the winning bidder for the project to which the Bid related. That same day Duinick advised me that it intended to accept Hanson's bid and use Hanson for its aggregates supply on the project. Knowing that Duinick intended to rely on Hanson for its aggregates supply, I contacted Mr. Larry Wisener by telephone the following day on December 6, 2006, to advise him that Hanson would be shipping aggregates to its Lubbock site beginning in mid-January 2007. I called Mr. Wisener because he has been Hanson's contact with SAW for requesting rail service and other related matters. Neither Mr. Wisener nor anyone else had ever advised Hanson that it should contact any other person or that Mr. Wisener was no longer associated with SAW. At that time Mr. Wisener stated that SAW would not provide such rail service because SAW had canceled the Hanson Lease and that a notice of cancellation had been sent on the previous day (December 5, 2006 – the same day Duinick had been identified as the winning bidder) to Jon Reedy of Hanson. Jon Reedy is the President of Hanson's Southwest Region, and I believe the letter attached as Exhibit B to Hanson's submission to this Board, dated December 21, 2006, is the letter to which Mr. Wisener referred. Mr. Wisener also indicated that the property subject to the Hanson Lease had been transferred to another company, but did not disclose the identity of the transferee or the date of the transfer.

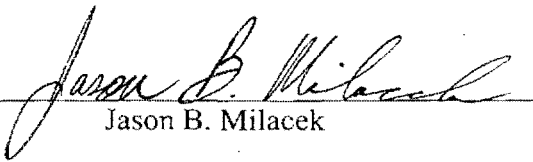
6. I refer to a letter, dated December 26, 2006, by Delilah Wisener of SAW to Mr. Melvin Clemons, which is attached as Exhibit E to SAW's reply, dated December

27, 2006. In that letter SAW requests, among other matters, "the return of track 9200 to SAW for use of aggregate transloading." The letter also states that the purpose of the request was "an effort to use track 9200, to handle Hanson's shipments." To my knowledge, Hanson has never used track 9200 for aggregates transloading or any other purpose, and neither Delilah Wisener, Larry Wisener nor any other person has contacted Hanson about using such track or inquired of Hanson whether such track would be suitable for the deliveries contemplated under the Bid. However, that track has been used in the past by competitors of Hanson for transloading aggregates.

7. The only means of rail deliveries to the Hanson Yard is through the Hanson Lease. Cancellation of the Hanson Lease will deprive Hanson of rail service to its yard in Lubbock, and it is not practical or economically feasible for Hanson to deliver aggregates to the Hanson Yard by means other than the rail. Hanson has at significant expense continued to maintain the Hanson Yard in Lubbock in order to participate as an aggregates supplier to the Lubbock area. Unlike some other transloading sites in the Lubbock area, the facility on the Hanson Lease is able to unload bottom dump rail cars. This is important and particularly beneficial to Hanson, as this is the type of cars Hanson typically uses in shipments to Lubbock and this facility, therefore allows for more efficient and less costly unloading and handling of the aggregates. In addition to the Bid, Hanson has been invited to bid additional projects in the Lubbock area and its ability to do so on a competitive basis is dependent on maintaining the Hanson Lease and adequate rail service to that lease. In Lubbock, there are few local sources of aggregates meeting highway specifications and such aggregates must be imported, generally by rail. While there are other potential locations in the Lubbock area that Hanson may be able to use to deliver aggregates by rail to Duinick under the Bid or potential future bids, I believe the shipments delivered to Hanson's Yard through the Hanson Lease are the most

economical and efficient means. Hanson's ability to deliver aggregates to its Lubbock yard provides an important public benefit in helping assure a competitive supply of such aggregates in that area.

Pursuant to 28 USC 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing to my knowledge and belief is true and correct.


Jason B. Milacek

Executed this 10th day of January, 2007.



August 1, 2006

**Hanson Building
Materials America, Inc.**

**Michael H. Hyer
Vice President
& General Counsel**

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Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: PYCO Industries, Inc. – Feed Line Application
South Plains Switching, F.D. 34890 and F.D. 34844

Dear Mr. Secretary:

Hanson Aggregates, Inc., a unit of Hanson PLC, a UK based construction materials company, is one of the largest producers of construction grade aggregates in the United States. Construction aggregates are most commonly used in the manufacture of concrete and asphalt and in the construction of roads and other improvements essential to our nation's infrastructure.

Hanson has shipped construction aggregates into the Lubbock, Texas market by rail using the services provided by South Plains Switching, Ltd. ("SAW"). We understand that PYCO Industries, Inc. has filed a feeder line application for all of the SAW system and, in the alternative, for less than the entire system (what has been label "Alternative Two"). We also understand that the Board determined to allow the application to go forward only on Alternative Two on the grounds that a majority of the shippers had not filed statements indicating that the existing SAW service was inadequate.

Hanson does not believe that the service by SAW is adequate or reliable. Hanson supports the PYCO application and requests that its application be granted for the entire system.

Hanson has had extensive experience with SAW and has not found the service to be adequate or in the public interest. For example, in 2005 Hanson entered into contractual commitments to supply construction aggregates from its Davis and Pedernal quarries to customers in Lubbock, Texas for use in certain highway construction projects. The terms of the contract provided for deliveries to be made by rail, the only practical means for shipment. Hanson owns property adjacent to a rail siding which Hanson uses to receive aggregates by rail and stockpile the aggregates for delivery to its customers. Deliveries under these contracts were made via that Hanson rail terminal in Lubbock. The ownership of a site near a rail siding to receive and stockpile aggregates is, of course, an important commercial asset to Hanson, as it allows Hanson to ship aggregates by rail to its customers in a convenient manner that some of Hanson's competitors are not able to offer.

Without notice to or permission from Hanson, SAW unilaterally delivered aggregates from a competitor of Hanson to this site. When Hanson objected to this trespass, SAW threatened to cease service to Hanson. As Hanson and its contractor customer could incur significant delay damages if the highway project were delayed due to an interruption in rail shipments and there was no alternative to SAW, Hanson had little choice but to allow itself to be a victim of such SAW intimidation. In fact SAW continued to deliver aggregates produced by Hanson competitors to this site, notwithstanding Hanson's objections

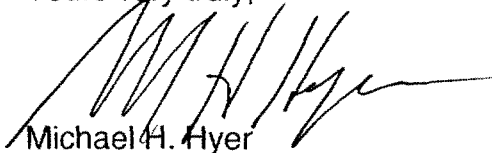
Moreover, with rumors that Hanson may formally support PYCO's application, Hanson was recently threatened by SAW with spurious claims for back charges on shipments made over an unknown timeframe. We believe these threats were made to discourage Hanson from responding to the Board in this proceeding.

Hanson does not now have any contracts requiring shipments of aggregates into the Lubbock market and rail deliveries is the only practical means of shipment for Hanson into this market. Hanson would like to bid jobs in the market and believes it would be in the public interest for Hanson to be a supplier to this market. However, with its past experience, Hanson has no interest in bidding jobs in this market as long as SAW is the provider of the feeder rail service.

Accordingly, we support PYCO's feeder line application for the entire system and urge its approval by the Board.

Pursuant to 28 USC 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing to my knowledge and belief is true and correct.

Yours very truly,


Michael H. Hyer
Vice President-General Counsel
Hanson Aggregates, Inc.

JOHN D. HEFFNER, PLLC**1920 N STREET, N.W.****SUITE 800****WASHINGTON, D.C. 20038****(202) 263-4180****FAX (202) 290-3939****j.heffner@verizon.net**

January 10, 2007

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**RE: STB Finance Docket No. _____, Petition of Hanson
Aggregates, for Interim Alternative Rail Service under 49
CFR Part 1146 over the tracks and facilities of South
Plains Switching Ltd.**

Dear Mr. Williams:

I am writing in my capacity as Surface Transportation Board counsel for West Texas & Lubbock Railway Co., Inc. ("WTLC") in connection with the above-captioned proceeding. Subject to the caveats and conditions identified below and pursuant to the Board's regulations at 49 CFR part 1146 (Interim Alternative Rail Service), WTLC is willing to provide alternative rail service for Hanson Industries, Inc. (Hanson) currently served by the South Plains Switching Ltd. (SAW) at Lubbock, TX.

WTLC is a class III short line railroad owned by Permian Basin Railways, Inc. (Permian), a short line railroad holding company headquartered in Chicago, IL. WTLC currently owns and operates over 100 miles of track in and around Lubbock, TX, and contiguous areas. WTLC currently handles approximately 4000 carloads of traffic annually utilizing 3 engines and 10 employees. WTLC connects with the Burlington Northern Santa Fe Railway (BNSF) at Lubbock. WTLC is currently providing alternative rail service to PYCO Industries, Inc., under an order issued by the Board in FD. FD No. 34899 on November 21, 2006. WTLC's owner, Permian Basin, currently owns four other short lines in the Midwest and Western regions of the country. Its senior management collectively has over 125 years of experience in providing railroad service, much of

it obtained through employment with either class I carriers or other regional or short line railroads before starting Permian Basin in 2002.

Hanson seeks alternative service from WTLC because, as the Board has previously found in FD No. 34802 and FD No. 34899 involving PYCO Industries, Inc., its current carrier (SAW) is either unwilling and/or unable to provide service. Barring relief from the Board, Hanson will either be forced to turn to truck service permanently or even shut down operations. WTLC has reviewed the Board's regulations under 49 CFR 1146 and believes that Hanson is entitled to relief.

Briefly, the Board's regulations require that the alternative rail service provider -- WTLC here -- 1) commit to providing service, 2) be able to provide service safely without degrading service to its existing customers, and 3) be able to provide service without unreasonably interfering with the incumbent carrier's ability to service the needs of its own customers.

In response, WTLC states:

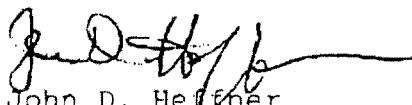
1. Subject to its making appropriate arrangements with BNSF for continuation of its present interchange of Hanson's traffic and commercial arrangements with BNSF for transfer of freight and further subject to WTLC's determining that it can continue to safely operate over the subject track, WTLC will commit to providing service to Hanson. The fact that WTLC has a longstanding, good relationship with BNSF generally and its people in Lubbock specifically should help to insure a smooth takeover of operations.
2. WTLC represents that it can continue to undertake to provide the requested service without jeopardizing service to its current customers. WTLC has sufficient locomotives, crews, equipment, and experience that it can continue providing service over SAW without affecting service over its own railroad. In that regard, WTLC will continue assigning one of its own engines to serve customers on the affected trackage and can provide additional power as may be necessary. Furthermore, because WTLC's

railroad is physically separate from SAW's Lubbock trackage, there should be no operating conflicts or other operational problems.

3. Because WTLC has worked carefully in the past to coordinate its operations on SAW trackage with those of SAW under protocols negotiated with SAW and imposed by the Board, WTLC's operations should not adversely affect those of the incumbent carrier [SAW].

Please contact me if you have any questions

Sincerely yours,



John D. Heffner
Counsel for West Texas
& Lubbock Railway Co., Inc.

cc: Mr. Melvin Clemens (by fax)
Thomas F. McFarland, Esq.
William Sippel, Esq.
William Mullins, Esq.
Charles Montagne, Esq.
Michael H. Hyer, Esq.